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Agenda item 115 (j)
Appointments to fill vacancies in subsidiary organs and other appointments: appointment of the judges of the United Nations Appeals Tribunal

Appointment of three judges of the United Nations Appeals Tribunal

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 62/228, entitled "Administration of justice at the United Nations", the General Assembly decided, inter alia, to establish a two-tier formal system of administration of justice, comprising a first-instance United Nations Dispute Tribunal and an appellate-instance United Nations Appeals Tribunal.

2. By the same resolution, the Assembly also decided that the judges of the Dispute Tribunal and the Appeals Tribunal shall be appointed by the General Assembly on the recommendation of the Internal Justice Council.

3. The statutes for the Dispute Tribunal and the Appeals Tribunal were adopted by the General Assembly in its resolution 63/253. The two tribunals became operational on 1 July 2009.

4. On 2 March 2009, by its decision 63/418, the General Assembly, on the recommendation of the Internal Justice Council (see A/63/489), appointed the following persons as judges of the Appeals Tribunal: Sophia Adinyira (Ghana), Rose Boyko (Canada), Jean Courtial (France), Kamaljit Singh Garewal (India), Mark P. Painter (United States of America), Luis María Simón (Uruguay) and Inés Weinberg de Roca (Argentina).

5. By its decision 65/414 of 28 January 2011, the General Assembly further appointed Mary Faherty (Ireland) as a judge of the Tribunal, following the resignation of Judge Boyko effective 15 January 2011.

6. Pursuant to paragraph 4 of article 3 of the statute of the Appeals Tribunal (General Assembly resolution 63/253, annex II), "[a] judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots,

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shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years". In accordance with that provision, four judges on the Appeals Tribunal were granted a seven-year term and three judges were granted a three-year term, determined by the drawing of lots.

7. Accordingly, the terms of office of Judges Jean Courtial, Kamaljit Singh Garewal and Mark P. Painter were determined to be three years. Their terms of office, which commenced on 1 July 2009, are thus due to expire on 30 June 2012.

8. It is therefore necessary for the General Assembly, during its sixty-sixth session, to appoint three judges to the Appeals Tribunal. In accordance with article 3 (4) of the statute, the term of office of the judges will be seven years, beginning on 1 July 2012.

9. The Secretary-General notes that the General Assembly, under agenda item 115 (i), is also to consider the appointment of the judges of the United Nations Dispute Tribunal during the current session. The Secretary-General further notes that certain candidates recommended by the Internal Justice Council for appointment to the Appeals Tribunal have also been recommended by the Council for appointment to the Dispute Tribunal (see A/66/664). Considering that the Appeals Tribunal is a higher judicial body than the Dispute Tribunal, and its judges must meet a higher standard of qualification (that is, judges of the Appeals Tribunal must possess at least 15 years of relevant judicial experience, while judges of the Dispute Tribunal must possess at least 10 years of relevant judicial experience), it is proposed that the General Assembly consider the appointment of the judges of the Appeals Tribunal before it considers the appointment of the judges of the Dispute Tribunal.

10. Accordingly, the Secretary-General proposes that once the General Assembly has appointed the judges of the Appeals Tribunal, the Secretary-General will issue a memorandum on the appointment of the full-time, half-time and ad litem judges of the Dispute Tribunal and a date for the election of the judges of the Dispute Tribunal will be announced thereafter.

II. Recommendations of the Internal Justice Council

11. In its report to the General Assembly at its sixty-sixth session (A/66/664), the Internal Justice Council recommends six candidates for consideration for appointment as judges of the Appeals Tribunal. The Council reviewed applications in July and August 2011 and interviewed shortlisted candidates in September 2011. Before the interviews were held, referees were contacted and written references obtained from two referees for each candidate. Candidates were required to complete a two-hour examination to test their writing and reasoning abilities, which was followed by an interview lasting 30 to 45 minutes. With the candidates' permission, the Council subsequently approached the relevant domestic bar associations and the International Bar Association to request confirmation of the integrity of the candidates.

12. The candidates recommended by the Council for appointment to the Appeals Tribunal are as follows:

Rosalyn M. Chapman (United States of America)
Moses Chinhengo (Zimbabwe)

Jean Courtial (France)
Alessandra Greceanu (Romania)
Vagn Prusse Joensen (Denmark)
Richard Lussick (Samoa)

13. The candidates' curricula vitae are provided in the annex to the above-mentioned report of the Internal Justice Council.

III. Procedure in the General Assembly

14. The appointment of the judges of the United Nations Appeals Tribunal will be made in accordance with the following:

(a) The statute of the Appeals Tribunal;

(b) The rules of procedure of the General Assembly;

(c) The recommendations of the Internal Justice Council as set out in its report to the General Assembly (A/66/664).

15. The appointment of a judge to the United Nations Appeals Tribunal is addressed in article 3 of its statute, which states:

> "2. The judges shall be appointed by the General Assembly on the recommendation of the Internal Justice Council in accordance with General Assembly resolution 62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.
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> "3. To be eligible for appointment as a judge, a person shall:
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> (a) Be of high moral character; and
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> (b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.
>
> "4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years. A current or former judge of the Dispute Tribunal shall not be eligible to serve in the Appeals Tribunal."

16. It is proposed that the General Assembly proceed to appoint the judges of the Appeals Tribunal by way of an election, bearing in mind paragraph 58 of General Assembly resolution 63/253, in which the Assembly invited "Member States when electing judges to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal to take due consideration of geographical distribution and gender balance". Only those candidates whose names appear on the ballot papers are eligible for election. The electors in the General Assembly will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote for not more than three candidates.

17. Those candidates who obtain the highest number of votes and a majority of votes in the General Assembly of the Members present and voting will be considered as elected and thereby appointed by the Assembly to the Appeals Tribunal.

18. Balloting shall continue in accordance with the rules of procedure until as many candidates as are required for the seats on the Appeals Tribunal to be filled have obtained, in one or more ballots, a majority of votes of the Members present and voting.